THE HON'BLE SMT JUSTICE T.MEENA KUMARI
&
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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WRIT PETITION NO.17401 OF 2007.

Dated:10.09.2007

Between:
Andhra Pradesh Public Service Commissioner
Rep., by its Secretary Harpreet Singh,

..... Petitioner

AND

Golkonda Krishna Prasad and others.

.. Respondents.

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WRIT PETITION NO. 17401 OF 2007.

ORDER: (Per the Hon'ble Smt Justice T.Meena Kumari)

This writ petition is filed challenging the order of the Tribunal, dated 22.6.2007 passed in O.A.No:239 of 2007 and batch.

The 1st respondent herein is the applicant and the petitioner herein is the 1st respondent before the tribunal. For the sake of convenience, the parties hereinafter will be referred to as arrayed before the tribunal.

The applicant filed the above O.A., seeking to call for records relating to and connected with the selections made by the Andhra Pradesh Public Service Commission in pursuant to Notification No.21 of 2003 and supplementary Notification No.6/2004 to make recruitment to Group–I Services of the State of Andhra Pradesh and to declare the decision of APPSC in not filling up all vacancies of Mandal Parishad Development Officer reserved to BC 'D' (General) category as illegal and arbitrary and consequently, to direct the 1st respondent-APPSC to consider the applicant for appointment to the post of Mandal Parishad Development Officer against one of the vacancies reserved to be filled by BC-'D' (General) candidates as per his merit and rank with all consequential benefits.

The tribunal having observed that the commission is required to make an enquiry before the selection list is finally sent to the

Government with regard to the candidates, who intend to relinquish or who do not opt to join service on selection and that in the present case, the Commission has not made any enquiry before sending the selection list to the Government and as such, the selection list sent to the Government cannot be said to be in accordance with law and that since the selection list has already been sent by the Commissioner to the Government and as the selected candidates have not been impleaded as parties to the case, the question of setting aside the selection list sent by the Commission would not arise and under the facts and circumstances of the case, the action of the commissioner treating the two selected candidates with 659 and 643 marks as candidates selected under BC –D General quota for the post of MPDO is contrary to law and the respondents are liable to treat the two selected candidates for the post of MPDO as open competition candidates and fill the two carry forward vacancies with BC 'D" General candidates and as the respondents did not hold any enquiry as contemplated under Rule 7 of Rules of Procedure, the final selection list sent to the Government is not just and proper, directed the respondents to fill up the unfilled vacancies from out of the left over merit list and to complete such process within one month from that day.

Having aggrieved by the same, the APPSC preferred the present writ petition.

Then main thrust of the argument of the learned counsel for the petitioner-Commission is that the Commission has followed the selection procedure as per the roster and that the applicants are not entitled to seek for redrawal of select list as the selected candidates have not been impleaded as party respondents to the O.A and that the question of conducting an enquiry as contemplated under Rule 7 of A.P.P.S.C. Rules of Procedure, does not arise in view of the

amendment to Rule 6 of the Rules where under the Commission shall have to send list of candidates selected equal to the number of vacancies and that the fall out vacancies, if any due to relinquishment and non joining, shall have to be notified in the next recruitment and thus, therefore, the enquiry as contemplated under Rule 7 of the Rules of Procedure has become redundant. The tribunal has failed to consider this amendment and as such, the order impugned is liable to be set aside.

On the other hand, it is contended by the learned counsel for the applicant that as per Rule 7 of the Rules of Procedure, an enquiry is contemplated on the relinquishment of appointment by the selected candidates and thereafter, the commission has to send the final selection list to the Government for appointment and that Rule 6 of the Rules of Procedure would come into operation only after the final selection list is prepared after the enquiry as contemplated under Rule 7 of Rules of Procedure and that as a matter of fact, in this case, the commission did not hold any enquiry as laid down in Rule 7 of the Rules of Procedure and therefore, the final selection list submitted to the Government is not in accordance with the rules and the same is liable to be set aside.

On the rival contentions, it has to be examined as to whether the final selection list submitted to the Government is in consonance with the Rules in question.

At this juncture, it is relevant to note down the following provisions:

Rule-6 (prior to amendment)

> "The ranking list prepared by the commission for selection in a direct recruitment shall remain in force for a period of one year from the date on which the selection list is published on the Notice Board of

the Commission or till the publication of the new publication list whichever is earlier. The commission may select the candidates from the ranking list in force in place of those who relinquish the selection or who do not join duty within the time given and also new requisitions (sent by appointing authorities). However, the commission shall have the right to freeze any ranking list for reasons recorded.

Rule-6 (after amendment):

The list of the candidates approved/selected by the commission shall be equal to the number of vacancies only including those for reserve communities/categories notified by the unit officers/government. The fall out vacancies if any due to relinquishment and non joining etc of selected candidates shall be notified in the next recruitment.

Rule-7:

Any candidate whose name has been included in a selection list in a direct recruitment prepared by the commission, on enquiry by the commission, may relinquish his claim for appointment in writing in the proforma prescribed by the commission. The commission shall thereupon remove the name of such candidate from the selection list and select another candidate according to rules. The candidate whose name has been so removed from the selection list shall be informed of such removal by the commission and shall have no right for the said appointment in future with reference to the said selection."

A perusal of rule –6 (after amendment) makes it clear that the question of keeping the selection list in force for one year and to select candidates from the ranking list in the place of those who relinquish selection or who do not join within the time given, does not arise as

rightly contended by the learned counsel for the petitioner-commission. However, it is to be noted that simultaneously, the provisions of Rule-7 where under an enquiry by the commission before sending the selection list to the government, is a mandate one, have not been amended. Apart from that, nothing is enunciated in the provisions that the provisions of Rule 6 and 7 have to be considered jointly while submitting the selection list to the Government. As such, they have to be read and considered independently. If that being the case, the procedure contemplated under Rule 7, which is a mandate one, is a step to be taken at the threshold of the selection list after conducting an enquiry as contemplated thereunder and then, only the provision of Rule 6 will come into operation. In addition to that, there is also no dispute that no such enquiry as contemplated under rule-7 has been conducted by the commission before sending the selection list to the Government.

In this background of the matter and in view of the provisions of Rule-7 of the Rules of Procedure, We have no hesitation to hold that the tribunal is justified in passing the order impugned herein. Hence, We see no merits in this writ petition and the same is liable to be dismissed.

Accordingly, this writ petition is dismissed. No costs.

At this stage, it is submitted by the learned counsel for the petitioner-commission that time granted by the tribunal is not sufficient to work out the unfilled vacancies from out of the left over merit list and therefore, time may be extended so as to enable the commission to comply with the order.

In view of the submission and in the present facts and circumstances of the case, time is extended up to 30.10.2007.

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T.MEENA KUMARI, J

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G.CHANDRAIAH, J

Dated:10.9.2007
Gurc/nn

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WRIT PETITION NO.17401 OF 2007.

(Order delivered by the Honourable Smt. Justice T.Meenakumari)

10th Septemebr, 2007